

**FLEIT, KAIN,
GIBBONS, GUTMAN,
BONGINI & BIANCO P.L.**

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MAR 28 2006

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TELECOPIER TRANSMITTAL FORM

DATE: March 28, 2006
TO: Examiner Anil Khatri
FIRM: USPTO, Group Art Unit 2193
FAX #: (571) 273-8300
PHONE: (571) 272-3725
FROM: Jon A. Gibbons

**TOTAL NUMBER OF PAGES: 17
(INCLUDING THIS PAGE)**

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MESSAGE:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Jason D. HIBBELER et al.

Serial No.: 09/939,005

For: *DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING*

Enclosed are the following:

Petition (2 pgs.) including Exhibit A (2 pgs. - Notice of Abandonment); Exhibit B (10 pgs. - Response); Exhibit C (1 pg. - Transmission Verification Report); Exhibit D (1 pg. - Auto-Reply Facsimile Transmission)

Docket No.: POU920010019US1

140-A01-001

March 28, 2006

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PATENTCERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below: On March 28, 2006

Date

Karen Taragowski
NameKaren Taragowski
Signature**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

| | | | | |
|--------------|---|---------------------------|------------------|------|
| Appl. No. | : | 09/939,005 | Confirmation No: | 3418 |
| Applicants | : | Jason D. Hibbeler, et al. | | |
| Filed | : | 08/24/2001 | | |
| TC/A.U. | : | 2193 | | |
| Examiner | : | Anil KHATRI | | |
| Docket No. | : | POU920010019US1 | | |
| Customer No. | : | 23334 | | |

VIA FACSIMILE (571) 273-8300

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

Attn: Examiner KHATRI Tel (571) 272-3725

PETITION UNDER 37 C.F.R. §1.181 (a) TO WITHDRAW**THE HOLDING OF ABANDONMENT**

Sir:

In accordance with 37 CFR §1.181 (a), the Applicants respectfully petition the Commissioner for withdrawal of the holding of Abandonment. The Notice of Abandonment, dated March 13, 2006 (see Exhibit A), states that the reason for Abandonment is "Applicant's Failure to Timely File a Proper Reply to the Office letter Mailed on 15 June 2005."

In reviewing our file, Applicants timely filed via facsimile, a Response Under 37 C.F.R. §1.111 to the Office Action dated June 15, 2005 on August 3, 2005 (see Exhibit B). Please note that this Response was timely filed as evidenced by both the Transmission Verification Report (see Exhibit C) but also the Auto-Reply Facsimile Transmission generated by the U.S. Patent and Trademark Office (see Exhibit D). Both

Docket No. POU920010019US1

Page 1 of 2

09/939,005

these Facsimile Transmissions indicate that Applicants' Response was indeed received by the U.S. Patent and Trademark Office on 8/3/2005 at 11:56:04 AM (Eastern Daylight Time) and that a total of 8 pages (including cover page) were received.

A list of Exhibits submitted herewith are as follows:

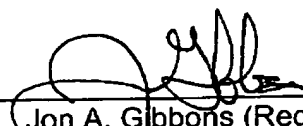
- A. Notice of Abandonment dated March 13, 2006;
- B. Response to Office Action with a "Certificate of Mailing or Transmission" in compliance with facsimile transmission procedures under 37 CFR 1.8(a) and 37 CFR 1.6(f), a Transmittal Sheet and a Fax Cover Sheet all dated June 15, 2005;
- C. Transmission Verification Report automatically generated by our Facsimile Machine evidencing the total number of pages sent, the telephone number of the USPTO central facsimile machine, dated June 15, 2005; and
- D. Facsimile Transmission Report automatically generated from the USPTO evidencing the total number of pages received dated June 15, 2005 dated June 15, 2005.

Therefore, Applicants did timely file a proper reply to the Office letter mailed on June 15, 2005. Applicants therefore respectfully request that the Commissioner withdraw the Notice of Abandonment dated March 13, 2006 and correctly enter the Response as filed on August 3, 2005.

Applicants believe that this petition is a non-fee petition. However, if it should be determined that a fee is required, please charge any fee that may be required to Deposit Account No. 50-1556.

Respectfully submitted,

Date: 3/28/06

By: 
Jon A. Gibbons (Reg. No. 37,333)
Attorney for Applicants
Fleit, Kain, Gibbons, Gutman,
Bongini & Bianco, P.L.
One Boca Commerce Center
551 Northwest 77th Street, Suite 111
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UNITED STATES DEPARTMENT OF COMMERCE
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/939,005 | 08/24/2001 | Jason D. Hibbeler | POU920010019US1 | 3418 |
| 23334 | 7590 | 03/13/2006 | EXAMINER | |
| FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487 | | | KHATRI, ANIL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2191 | |

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Received

MAR 13 2006

FLEIT, KAIN ET AL.


Exhibit A

| | | | |
|------------------------------|-----------------|-----------------|--|
| Notice of Abandonment | Application No. | Applicant(s) | |
| | 09/939,005 | HIBBELER ET AL. | |
| | Examiner | Art Unit | |
| | Anil Khatri | 2191 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 15 June 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


ANIL KHATRI
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

USPTO

8/3/2005 12:00 PM

PAGE 1/001

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08/03/2005 11:52 661-999-9012 FLEIT KAIN ET AL. PAGE 01/08

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BONGINI & BIANCO P.L.
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writer's e-mail: gibbons@FocusOnIP.com

TELECOPIER TRANSMITTAL FORM

DATE: August 3, 2005
TO: Examiner Anil Khatri
FROM: USPTO, Group Art Unit 2183
FAX #: (571) 273-8300
PHONE: (571) 272-3723
FROM: Jen A. Gibbons

TOTAL NUMBER OF PAGES: 8
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MESSAGE:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Jason D. HIBBERLER et al.
Serial No.: 09/939,005
For: DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING

Enclosed are the following:
Transmittal letter (1 pg.); and Response (6 pgs.)

Docket No.: POUS20010019US1 140-AI-001 August 3, 2005

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS TRANSMITTAL IS LEGALLY PRIVILEGED AND CONFIDENTIAL, DISCLOSED ONLY TO THE U.S. DEPARTMENT OF COMMERCE AND AMERICA'S IP FOR REASON OF THEIR INTERESTS IN THAT THEY HAVE INITIATED PROCEEDINGS TO OBTAIN A FINAL DECISION ON THE MERITS OF THE CASE. ANY DISCLOSURE OF THIS INFORMATION TO OTHERS WITHOUT THE WRITTEN PERMISSION OF THE U.S. DEPARTMENT OF COMMERCE OR AMERICA'S IP FOR REASON OF THEIR INTERESTS IN THAT THEY HAVE INITIATED PROCEEDINGS TO OBTAIN A FINAL DECISION ON THE MERITS OF THE CASE WILL BE SUBJECT TO PENALTIES UNDER FEDERAL LAWS. IT IS REQUESTED THAT YOU MAINTAIN THE CONFIDENTIALITY OF THIS INFORMATION AND NOT DISCLOSE IT TO OTHERS WITHOUT THE WRITTEN PERMISSION OF THE U.S. DEPARTMENT OF COMMERCE OR AMERICA'S IP FOR REASON OF THEIR INTERESTS IN THAT THEY HAVE INITIATED PROCEEDINGS TO OBTAIN A FINAL DECISION ON THE MERITS OF THE CASE.

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Exhibit B

TRANSMISSION VERIFICATION REPORT

TIME : 08/03/2005 11:55
NAME : FLEIT KAIN ET AL.
FAX : 561-989-9812
TEL : 561-989-9811
SER.# : 000L3J186396

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

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GIBBONS, GUTMAN
BONGINI & BIANCO P.L.**
ATTORNEYS AT LAW

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writer's e-mail: jgibbons@FocusOnIP.com

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DATE: August 3, 2005
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FIRM: USPTO, Group Art Unit 2193
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MESSAGE:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Jason D. HIBBELER et al.

Serial No.: 09/939,005

For: *DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING*

Enclosed are the following:

Transmittal letter (1 pg.); and Response (6 pgs.)

Docket No.: POU920010019US1

140-A01-001

August 3, 2005

**FLEIT, KAIN,
GIBBONS, GUTMAN
BONGINI & BIANCO P.L.**
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writer's e-mail: jgibbons@FocusOnIP.com

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Docket No.: POU920010019US1

140-A01-001

August 3, 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of : Atty. Docket No. POU920010019US1
 Jason D. HIBBELER, et al. : Group Art Unit: 2193
 Serial No. 09/939,005 : Examiner: Anil Khatri
 Filed: August 24, 2001 : Confirmation No. 3418
 For: DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING

TRANSMITTAL**MAIL STOP AMENDMENT**

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

SIR:

Transmitted herewith is a response in the above-identified application:

☒ No additional filing fee is required.The fee has been calculated as shown below. *(Small entity fees indicated in parentheses.)*

| CLAIMS AS AMENDED | | | | | | |
|---|--|-----|--|--|---------------------------|------------|
| (1) | (2) Claims Remaining After Amendment | (3) | (4) Highest Number Previously Paid For | (5) Extra Claims | (6) Rate | (7) Fee |
| Total Claims <i>(Small Entity)</i> | 19 | - | 20 | 0 | 50.00 <i>(25.00)</i> | 0 |
| Independent claims <i>(Small Entity)</i> | 3 | - | 3 | 0 | 200.00 <i>(100.00)</i> | 0 |
| Multiple Dependent <i>(Small Entity)</i> | 0 | - | 0 | 0 | 360.00 <i>(180.00)</i> | 0 |
| Extension of Time Fee <i>(Small Entity)</i> | One Month \$120 <i>(\$60)</i> | | Two Months \$450 <i>(\$225)</i> | Three Months \$1020 <i>(\$510)</i> | | 0 |
| Total | | | | | | \$0.00 |

XX The Commissioner is hereby authorized to charge any required fees to Deposit Account No. 09-0463.

Respectfully submitted,

Date: 8/3/05

By:


 Jon A. Gibbons
 Reg. No. 37,333

Customer No. 23334

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